mandant or Demandants, in any such Action, Bill or Plaint, after Appearance of the Defendant or Defendants, be *non- **433** suited, or that any Verdict happen to pass by any lawful Trial against the Plaintiff or Plaintiffs, Demandant or Demandants, in any such Action, Bill or Plaint, then the Defendant and Defendants, in every such Action, Bill or Plaint, shall have Judgment to recover his Costs against every such Plaintiff and Plaintiffs, Demandant and Demandants, (3) to be assessed, taxed and levied in Manner and Form as Costs in the said recited Actions are to be assessed, taxed and levied in and by the said Law of the three and twentieth Year of King *Henry* the Eighth. *Coke*, 29.

I. Cases wherein by the Statute made 23 H. 8, c. 15, the Defendant shall recover his Costs. Hetley, 146.

II. 1 Bulstr. 189. 2 Bulstr. 261. 3 Bulstr. 248. Several Cases wherein the Defendant shall recover his Costs against the Plaintiff. 8 Eliz. c. 2. 2 Roll. 75, 87, 213. Hob. 219. Hutt. 16, 22. March, 24. Cro. Jac. 229. 23 H. 8, c. 15.

Under this Act the defendant is entitled to costs on a nonsuit or verdict in all cases where the plaintiff would have recovered them if he had had judgment. And it seems that the Act does nothing more than define the classes of action, giving the defendant costs in those classes of actions, in which plaintiffs would in general have costs, Corbett v. Wheeler, 3 E. & E. 358. It has been holden that the plaintiff shall not be permitted to allege the insufficiency of his declaration, so that he could not have had costs thereon, in order to deprive the defendant of his costs, Tidd Prac. 981, but a distinction is taken in Thomas v. Bligh, 3 Lev. 327, where the action is wholly mistaken. And a case has occurred, where two points being reserved at the trial, one of which was a ground of nonsuit and the other of arresting the judgment, and both determined against the plaintiff after verdict for him, the Court arrested the judgment, as the defendant might have demurred to the declaration, and besides his conduct appeared to have been reprehensible, the consequence of which was that each party had to pay his own costs, Cameron v. Reynolds, Cowp. 403. If issue is taken on a plea in abatement and the plaintiff be nonsuited, the defendant is entitled to his costs, for the issue found for the plaintiff is peremptory, and he would have had his costs. But it seems to be otherwise where the plaintiff confesses the plea in abatement to be true, and enters a *nil capiat per breve*. And where the plaintiff recovered a verdict and a bill of exceptions was taken, on which the judgment was reversed and the plaintiff took nothing by his writ, it was admitted that this was within none of the Statutes giving a defendant costs, although as it turned out, the defendant ought to have had a verdict, when he would have recovered his costs, Bell v. Potts, 5 East, 49. So it is said that if a plaintiff enter a *nolle pros.* after issue, as it is a bar to another action and differs from a nonsuit, the defendant